

# Child Custody Issues Specific to Scotland

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## O & A Fact Sheet

➤ **Is there a general custody law that covers all of the U.K.? Do Scotland, England, and Northern Ireland have separate legislation?**

Scotland has separate legislation from England and Northern Ireland. The main piece of legislation in Scotland that regulates the relationship between children, parents, and other people who may be involved in raising a child is the Children (Scotland) Act 1995. You can view the 1995 Act online at:

[http://www.legislation.hmso.gov.uk/acts/acts1995/Ukpga\\_19950036\\_en\\_1.htm](http://www.legislation.hmso.gov.uk/acts/acts1995/Ukpga_19950036_en_1.htm)

➤ **Absent a court order, do married parents have equal rights of custody to their minor children? What about children born out-of-wedlock? What rights does an unwed father have and how does he obtain them?**

Married parents have equal rights of custody. The Children (Scotland) Act 1995 details '*parental responsibilities and rights*' or PRRs, that parents have for their children. PRRs include the responsibility (and the corresponding right) to:

- safeguard and promote the child's health, development and welfare
- provide direction and guidance to the child
- maintain direct contact and personal relations with the child, if he or she does not live with you
- act as the child's legal representative

A child's mother has PRRs automatically. A child's father will have automatic PRRs only if he was married to the mother at the time of conception or subsequently, or if he registers the birth of the child jointly with the mother, in accordance with The Family Law (Scotland) Act 2006. This applies to children born on or after 04 May 2006. A father who does not have PRRs can acquire them by marrying the mother, by completing and registering a Parental Responsibilities and Parental Rights Agreement (PRPRA), or by seeking them from the court. The PRPRA (under Section 4 of the 1995 Act) is available on the

web page referred to in the following paragraph. You should take independent legal advice if you are uncertain about your responsibilities and rights.

You may be interested in our booklet 'Family Matters – Family Law and Young People in Scotland.' You can view it online at <http://www.scotland.gov.uk/>. If you would like copies of the booklets, write to us at the address above, e-mail [family.law@scotland.gsi.gov.uk](mailto:family.law@scotland.gsi.gov.uk), or call us at 0131 244 3581.

➤ **Are there special courts that hear custody disputes (family law courts)?**

At the time of writing, only Glasgow has a family law court. In the rest of Scotland, most family cases are heard in an ordinary Sheriff court, although they can also be heard in the Court of Session, Scotland's supreme civil court.

➤ **Are there special terms that I should know?**

In Scotland, we use the terms 'residence' and 'contact' instead of 'custody' and 'access'. Note that residence is not synonymous with custody, nor is 'contact' the same as access. Under the Children (Scotland) Act 1995, the court can make any orders it thinks fit in relation to parental responsibilities, parental rights, and guardianship. Section 11(2) of the Act defines some of the orders that the court can make. I have outlined below some of the orders listed in Section 11(2). In deciding whether to make an order, and what order to make, the court must hold as its paramount consideration the welfare of the child involved. It must also not make any order unless to do so is better than to make none at all.

**PRRs (Parental Responsibilities and Rights)**

The court can:

- Deprive a person of some or all of his parental responsibilities or parental rights in relation to a child.
- Impose upon someone who is at least 16 years old, or is a parent of the child, parental responsibilities in relation to the child
- Give someone parental rights in relation to a child

**Contact and Residence**

The court can make a 'residence order', setting out with whom a child under 16 years of age is to live, or setting out with whom and during what periods, if the child is to live with different people at different times.

It can also make a 'contact order' regulating the arrangements for maintaining personal relations and direct contact between a child under the age of 16 and a person with whom the child is not or will not be living.

**Specific Issues**

A 'specific issue' order is when the court makes an order regulating a specific question. This might be about a child's name, religion, schooling, or a holiday outside the UK.

### **Interdict**

The court can make an order prohibiting someone from doing something specified in the order. It could, for instance, make an order prohibiting a parent from changing a child's name, or taking the child to a particular country.

➤ **Are custody decisions made in the "best interests of the child?"**

As noted above, the court must, when deciding whether to make an order, and what order (if any) to make, hold as its paramount consideration the welfare of the child involved.

➤ **Does there seem to be any gender/nationalistic bias?**

No.

➤ **Are custody disputes common and do they take a long time to resolve? Are U.S. custody orders recognized? Can they be registered or is it possible to obtain "mirror" orders? How can that be done?**

In most cases the court will order a 'child welfare hearing,' which will take place very soon after the case begins. You should seek independent legal advice on your particular circumstances.

➤ **How are civil custody orders enforced? Is enforcement effective?**

The court can vary its orders (for instance, make a residence order giving residence to the non-resident parent). It could also consider the person not complying to be in contempt of court, and impose a fine, a custodial sentence or both. In deciding how to deal with someone who does not comply with an order, it must hold as its paramount consideration the welfare of the child.

➤ **Can a parent remove a child from the U.K. without the consent of the other parent?**

Section 2 (3) of The Children (Scotland) Act 1995 prevents a child who is habitually resident in Scotland from being removed from the UK without the consent of persons exercising the right of contact or residence. In addition, Section 35 of the Family Law Act 1986 enables a court in Scotland to grant an interdict against a child being removed from the UK.

➤ **Do both parents have to agree to the issuance of a British passport? If there is a U.S. custody order restricting passport issuance, can a parent in the U.S. ask that a British passport not be issued?**

Provided that no objection has been lodged with the UK Passport Service by a parent or other objector, passport facilities are normally granted to children with the consent of either parent (or parent acting *in loco parentis*). Where the parents were not married to each other at the time of the child's conception or

subsequently, the mother's consent is required if the father has not been given parental responsibility or parental rights.

➤ **Is parental abduction a criminal offense?**

Section 6 of The Child Abduction Act 1984 makes it an offence for a person connected with a child under the age of 16 years to take or send the child out of the UK without the appropriate consent, if there is an order of the court awarding custody of the child to another person.

➤ **For Hague applications:**

1) Do you require an Article 28 Power of Attorney form?

No

2) Must certificates (marriage, birth, etc.) be certified?

Yes

3) What documents are required and which are helpful?

An affidavit covering the background to the case and removal of the child from the place of residence.

For more information on International Children and Family Services, and the Hague Convention, please visit [www.travel.state.gov/family](http://www.travel.state.gov/family).

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